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IN THE

Supreme Court of the United States

October Term, 1955.

No. 862.

COMMERCIAL TRAVELERS MUTUAL ACCIDENT ASSOCIATION OF AMERICA,
Petitioner,

vs.

J. C. SCHUTT, Administrator of the Estate of JOHN P. BELL, Deceased, JANE BELL, FRANCES BELL EBLING and MARY BELL DOUGLAS,
Respondents.

Reply Brief on Behalf of Petitioner, Commercial Travelers Mutual Accident Association of America.

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OCTOBER TERM 1955.

COMMERCIAL TRAVELERS MUTUAL ACCIDENT ASSOCIATION OF AMERICA, Petitioner, vs. J. C. SCHUTT, Admr. of the Estate of John P. Bell, Deceased, JANE BELL, FRANCES BELL EBLING and MARY BELL DOUGLAS, Respondents.	No. 862

REPLY BRIEF ON BEHALF OF PETITIONER, COMMERCIAL TRAVELERS MUTUAL ACCIDENT ASSOCIATION OF AMERICA.

This brief is written for the purpose of meeting certain arguments raised in the brief of respondents herein.

Application of Chapter 127 of the Laws of Tennessee of 1897 (Williams Tennessee Code §6219).

Respondents assert that the above Tennessee statute in some way has a bearing on the issues herein involved. It should be pointed out that the attempted service of process was not made pursuant to this section of Tennessee law, and the statute was never raised by anyone until it appeared for the first time in respondents' brief upon the appeal to the Court below. This statute depends, for any effect it may have, upon a written designation of the Commissioner of Insurance as an agent upon whom service of process may be made. No such designation was ever made by petitioner, and it is significant that the Court below does not even mention this statute in its opinion.

Whether the Judgment of the Court of Appeals is Final is Immaterial.

Respondents under Point I of their argument indicate that the judgment of the Court of Appeals is not final, and suggest that a review of the judgment at this stage of the litigation would be premature, since the issues involved are not fundamental to the conduct of the action. In support of this contention respondents cite *Land v. Dollar*, 330 U. S. 731, and *United States v. General Motors Corporation*, 323 U. S. 373, both of which cases amply support the position of petitioner herein. It is difficult to imagine a situation in which the issues involved could be more fundamental. The attack made by petitioner upon the Tennessee statute is twofold. First, we assert that the statute is inapplicable, and secondly, that it is unconstitutional. It is absurd, therefore, to suggest that the issues raised herein are not fundamental. What useful purpose is to be served by taking proof in respect to a statute, the validity and applicability of which remain undetermined? As this Court said in *United States v. General Motors Corporation*, at page 377:

> "• • • The cause was remanded for trial in accordance with the ruling of the Circuit Court of Appeals. We think we should review that ruling inasmuch as it is fundamental to the further conduct of the case. The correctness of the decision of the Court below depends upon the scope and meaning of the constitutional provision: • • •"

In the same manner any further determination by the District Court with respect to the Tennessee judgment depends upon the correctness of the ruling of the Court of Appeals in regard to the Tennessee statute, which ruling it is respectfully submitted was erroneous.

Even, however, assuming, but not admitting, the facts alleged by respondents in their affidavits upon the motion for summary judgment to be true, it is the contention of petitioner that the Tennessee statute is inapplicable for the reasons set forth in *Parmalee v. Commercial Travelers Mutual Accident Association of America*, 206 F. 2d 523, which decision is in conflict with that of the Court below.

The Decision of the Court Below is in Conflict With Applicable Decisions of This Court.

In passing it might be well to consider the cases cited by respondents at page 8 of their brief, which they claim establish that petitioner was amenable to service under traditional concepts of due process. These are *Lumbermen's Insurance Company v. Meyer*, 197 U. S. 407, and *Commercial Mutual Accident Company v. Davis*, 213 U. S. 245. It should be pointed out that in both of those cases there were present in the state claiming jurisdiction agents of the company having authority to bind the company within that state by their acts. The mere presence of an independent investigator in the State of Tennessee, having no authority to bind this association, is entirely different from the situation prevailing in the two cases last mentioned.

An Important Question of Federal Law is Involved Which Has Not Been Decided by This Court.

The question involved which has not been decided is the constitutionality of the Tennessee statute and similar statutes involving the conduct of the entire insurance industry. The attack upon the constitutionality of this statute is by no means limited to the question of whether it violates the provisions of Section 8 of Article I of the Constitution with respect to the right of Congress to con-

trol the use of the United States Mail. In view of respondents' brief on this subject, however, it seems obvious that it is mere sophistry to suggest that because "the Tennesee statute contains no provision even remotely attempting to infringe upon this power of the Congress" that it does not in effect do so.

For the Reasons Set Forth in the Petition the Judgment of the Court Below Should be Reviewed.

Respectfully submitted,

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